Business Associations

Fall 2018

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Required Materials

2. The statutory supplement: O’Kelley and Thompson, **CORPORATIONS AND OTHER BUSINESS ASSOCIATIONS, 2018 STATUTORY SUPPLEMENT**, (Aspen Publishers (2018)).
3. Professor’s handouts.

Schedule

The class is scheduled to meet from 9:30-10:20 Monday through Thursday in Room 104. Several classes will be cancelled. In order to avoid scheduling make up classes, we will sometimes end our Tuesday and Thursday classes at 10:45.

Subject Matter of the Course

The course addresses the relationships among the owners and managers of various types of business associations and the relationship of the owners to creditors of the business association. The relationships among the owners of a business association relate to the allocation of power and money. The relationship of the owners to the managers principally relates to the allocation of power. The relationship of the owners to the creditors principally relates to the allocation of money.

How the Course Differs From Most First Year Courses

Most courses in the first year of law school address the rights and duties of people to each other as individual parties. Person A promises person B. Person A hits person B. Person A enters land owned by Person B. The law of business associations addresses groups of persons and how they interact within the group. How should the group make a decision? Should unanimity be required? Should majority rule? How big a majority? A majority of whom? In this sense the course is similar to the federalism and separation of powers parts of Constitutional Law.

Much of the first year of law school focuses on common law cases. Cases are also important in Business Associations. However, these cases are often interpreting statutes. We will spend much more time analyzing statutes than most first year courses. Statutes are designed as a set of answers to legal questions. Unfortunately, statutes are often somewhat opaque as to the questions they are answering.
The function of the cases in the course is first to set forth what legal question is being asked. The problems in the casebook perform this same function. In your preparation for class your first task will be to figure out what legal question is in play. Your next task will be to read the statute to try to understand the answer the statute provides. The court’s analysis of the question and the interpretation of the statute will help you with this. You will soon see that in even a modestly complex statute you will need to analyze more than one section.

The Analytical Structure of the Course

In any business association different actors have different labels. In a partnership there are owners who are partners and there are often employees. In a corporation there are shareholders, directors and officers in addition to employees. In a limited liability company in addition to employees there are owners who are members and sometimes there are managers. One basic, but potentially confusing point, is that one person can occupy more than one role. For example, in a corporation one person can be a shareholder, director and officer.

The most basic question in any business association controversy is, “What type of business association is potentially in play”? As you will see in the first assignment, the parties often disagree about this. After you see what type of business association is potentially in play, you must decide what role in the business association each party potentially occupies. Each role in a business association is assigned a set of rights and responsibilities. For example, it is important to know whether a person fulfilling a particular role in a business association receives a share of the profits, is liable for the debts of the business, can vote on ordinary business decisions, can bind the business in contract, can have his or her interest in the business bought out if he or she wants to leave or dies, or can force a liquidation of the business. The answers to these and many other questions are contained in the applicable statutes. Much of the course consists of discovering the answers to these questions.

After we discover the answers to each of these questions we will face an important issue. We will need to determine if the rules we have discovered are immutable rules or are merely default rules. Many of the rules are merely default rules. The law wants people in business associations to be able to craft the relationships that they desire. If a rule is merely a default rule, we will need to determine what sort of private ordering is necessary to change the default rule. Will an oral agreement between the parties suffice? Is a written document necessary? If a writing is necessary, does it have to be in a particular type of document? For example, in a corporation does the writing have to be part of the articles of incorporation or will the bylaws do? Can the rule be changed by less than unanimous consent?

Finally, after we have discovered the combination of statutory rules and private ordering that applies, we will have to decide whether a court should set this result aside when a party claims that it is unfair in a particular circumstance. These questions will often arise when a party claims someone operating with the power allocated to them by statute and/or private ordering has violated their fiduciary duty to the claimant.
The Purpose of the Analytical Structure

The goal of the analytical structure set forth above is to allow you to provide your client the combination of rights and responsibilities they desire. To do this you will need to choose the type of business association that will give your client what they want. You will need to decide what role your client should play in the business association. You will also need to determine what type of private ordering is necessary to achieve your client’s objective. If you fail in any of these tasks, some other lawyer will need to argue to a court that, despite your failure to structure your client’s role to achieve his or her objective, they are protected by the principles of fiduciary duty. (Your former client’s new lawyer will also have to analyze the potential for a legal malpractice claim against you.)

Learning Objectives

Given the analytical structure set forth above, by the end of the course the student should be able to determine:

1. What type of business association has been formed.
2. What role each actor performs in the business association.
3. What statutory or other rules apply to each actor regarding matters including the allocation of decision making power, the power to bind the entity, the power to exit the entity and force either a buyout or a liquidation of the entity and the allocation of profits and losses in the entity.
4. Whether these rules are immutable or default.
5. What type of private ordering is required to change a default rule.
6. Whether principles of fiduciary duties affect outcomes dictated by the rules discussed above.

The Initial Example

To start your analysis of the law of business associations, imagine that you have decided to abandon law school and start a rock band. You know that the band will need other people to play various instruments and sing harmony. (You of course will sing lead.) You also know that the band will need money for recording and touring expenses. Various instruments, vehicles, microphones and other equipment will also have to be bought, borrowed, rented or contributed. You are considering owning the business yourself or joining with other co-owners, presumably the other musicians in the band. As you consider this basic choice, think about the following questions. Who will come up with the money and property the band needs? Who will share in the profits or losses it generates? Who will get to decide on the songs to be played, the venues to be played in, and when the recordings are in finished condition. If most of the members of the band want to kick someone (possibly you) out of the band
what will happen? If one member of the band wants out, will he or she be able to force a liquidation of the band’s assets? Keep in mind, in such a liquidation anyone, whether in the band or not, may be able to purchase the band’s assets including its copyrights and name. If there is more than one co-owner in the band, how will the answers to all of the foregoing questions be affected by what type of business association is chosen, what roles various people are assigned and what private ordering has taken place?

The Exam

The exam will be an in class closed book exam.

Attendance and Class Participation

Attendance and class participation can affect your grade in either direction. It is your responsibility to record the dates of your absences, if any. If you are going to miss more than four (4) class sessions, you must contact me so that we can discuss the reasons for each of your absences and the effect the absences will have on your grade.

If for some reason you will not be able to adequately prepare for a class session, please contact me before class by leaving me a note on my office door asking not to be called on that day.

Recommended Courses

Much of what lawyers do is fight about money and prevent such fights by adequate planning. The only money that counts is the money left over after paying all required taxes. I strongly recommend that you take Law 930 Taxation concurrently with this course. In practice, no significant business planning decision is made without analyzing the tax consequences.

Since your clients will be very interested in the financial impact of decisions you will be advising them on, I also recommend that you take Law 921 Accounting for Lawyers. Although it will not be your job to do the accounting, you will need to understand basic accounting documents that reflect the financial implications of decisions in which you are involved.

Clickers

We will be using clickers for multiple choice questions during the semester. Unless otherwise indicated during class, your responses to these questions will be graded and count toward your final grade for the course. Of course, participation in clicker questions is subject to the Honor Code and other disciplinary policies. Points from the clicker questions will be combined with the points from the final
exam to equal the total points available for the course. The points available from clicker questions will equal no more than 20% of the points available for the course.

In determining the points earned from each student’s responses to clicker questions, only the top 80% of that student’s responses will be counted. The bottom 20% of the student’s responses will be disregarded. This means that a student can miss 20% of the clicker questions and still get a perfect score on the clicker questions.

If you do not know the answer to a clicker question, you should still click some answer. If you do not click any answer, you will be deemed absent from the class for purposes of the attendance policy.

University Policies

Credit Hours for Coursework
In accordance with ABA Standard 310, the College of Law awards one credit hour for experiences that are reasonably designed to involve 50 minutes of classroom or direct faculty instruction and two hours of out-of-class student work per week, or at least the equivalent amount of work for academic activities including simulation, field placement, clinical, and other academic work leading to the award of credit hours.

The Course requirements outlined above with respect to materials and assignments, in my professional judgement, are complex enough in nature that it is expected that the amount of out-of-class time it will take students to complete the assignments will meet the rule.

Center for Disability Access and Resources (CDAR) Reasonable Accommodations Statement:
Reasonable accommodations are available for students who have documented temporary or permanent disabilities. Ideally, students in Moscow and Boise should meet with CDAR by the end of the first week of class to assess if any accommodations are needed for courses and/or examinations. All accommodation requests are then submitted by CDAR to Dean Dodge for final approval. CDAR serves as the sole evaluator of medical documentation and determines reasonable accommodations on a per semester basis. The College of Law does not have the authority to evaluate or grant disability accommodations without CDAR first submitting a recommendation. You may contact CDAR by:

- Calling 208-885-6307
- Emailing cdar@uidaho.edu

It is ultimately the student’s responsibility to seek a disability accommodation, and until an accommodation is approved by CDAR and Dean Dodge, no student will be entitled to receive any accommodations. To learn more about CDAR, visit its website at
http://www.uidaho.edu/current-students/cdar. Moscow students may also visit CDAR in suite 127 of the Pitman Center. Please review the College of Law Catalog and Student Handbook for more information on the disability accommodation process.

**Recording Class Sessions:**
Students may not electronically record classes unless they have the express consent of the instructor, except where the Dean of Students has allowed recording as a disability accommodation pursuant to a recommendation by CDAR. Recording classes without the instructor’s express consent violates the Honor Code. Students recording classes as a disability accommodation must follow procedures set down by CDAR. Students who are unable to attend class for reasons of illness or other exigencies must receive permission from the instructor before classes are recorded on their behalf. Contact the Law Library for recording equipment and information on recording procedures.

**Civility**
In any environment in which people gather to learn, it is essential that all members feel as free and safe as possible in their participation. To this end, it is expected that everyone in this course will be treated with mutual respect and civility, with an understanding that all of us (students, instructors, professors, guests, and teaching assistants) will be respectful and civil to one another in discussion, in action, in teaching, and in learning.

Should you feel our classroom interactions do not reflect an environment of civility and respect, you are encouraged to meet with your instructor during office hours to discuss your concern. Additional resources for expression of concern or requesting support include the College of Law Dean of Students (jdodge@uidaho.edu), the University Dean of Students office and staff (885-6757), the UI Counseling & Testing Center’s confidential services (885-6716), or the UI Office of Civil Rights & Investigations (885-4285).

**First List of Assignments**
Set forth below are assignments for the first part of the course. Assignments for the later part of the course will be distributed later. The pages indicated below are in the course casebook. I have numbered each class session rather than providing a date because there will be several canceled classes and make up classes that have yet to be scheduled.

How do people become partners?

1. Handout.
2. Handout.

How do partners share profits and losses?
3. 66-73.

When can a partner take a business opportunity for himself or herself?
Can a partner contract with the partnership?

4. 73-84.

How do partners make business decisions?
Can partners be selfish in making these decisions?
Are partners liable to each other for honest mistakes in making business decisions?

5. 84-95.

What happens when a partner wants to leave the partnership or dies?
What happens when some partners want to kick another partner out of the partnership?
When does the partnership have to be liquidated as opposed to merely purchasing the interest of the person leaving the partnership?
If a buyout of a partner’s interest is going to occur, what will be the amount of the purchase price? When is it due? How will a delayed payment be secured?
How are the answers to the foregoing questions affected by whether the partners had agreed to remain partners for a certain amount of time, which has not expired?

6. 96-106.
7. 106-111.
8. 111-115.

When can an agent bind a principal in contract?


When can a partner bind the partnership in contract?

11. 131-139.
When can a partner bind a partnership in contract after the partnership has ended or the partner has left the partnership?


Review problems regarding partnership dissolution.

13. Handout.